

## DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

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FILE: B-194514

DLG 00086

DATE: May 31, 1979

MATTER OF:

R.B.S., Inc. - Reconsideration

[Protest Concerning IFB Cancellation]

DIGEST:

Prior decision dismissing protest as untimely is affirmed as no error of fact or law has been shown and protest will not be considered under 4 C.F.R. § 20.2(c) (1978) since matter does not involve principle of widespread procurement interest.

R.B.S., Inc. (R.B.S.), requests reconsideration of our decision in R.B.S., Inc., B-194514, April 24, 1979, 79-1 CPD 286, dismissing its protest as untimely.

R.B.S. protested the Defense Logistics Agency's (DLA) cancellation of invitation for bids (IFB) No. DLA 600-79-B-0051, following DLA's decision to cancel Item 4 of the subject solicitation and resolicit under IFB No. DLA 600-79-B-0116. R.B.S. contended that the cancellation and resolicitation were not required under Defense Acquisition Regulation (DAR) § 2-407.9 (1976 ed.) and that resolicitation of the procurement biased R.B.S.'s competitive standing.

R.B.S. initially filed its protest with DLA by letter dated February 28, 1979, and was notified that its protest had been denied by letter dated March 15, 1979, received by R.B.S. on March 19. Since R.B.S. did not file its protest with our Office until April 3, 1979, which was more than 10 working days after formal notification of initial adverse agency action, we found the protest untimely under § 20.2(a) of our Bid Protest Procedures (Procedures), 4 C.F.R. part 20 (1978). Moreover, we noted that while § 20.2(b)(3) of our Procedures provides that an untimely filed protest may be considered where sent by certified

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mail if sent not later than the fifth day prior to the final date for filing, this provision was not applicable to the instant case as the United States Postal Service postmark indicated R.B.S.'s certified letter was sent less than 5 days before that date.

R.B.S., through counsel, now argues that its protest was timely filed as it was "forwarded by certified mail \* \* \* within ten days of its receipt of the Agency's denial letter." Further, R.B.S. contends that the specific issues raised should be considered since they are significant to procurement practices and procedures.

With regard to the first contention, R.B.S. has presented no new evidence or legal argument which convinces us our earlier decision in this regard was in error. The protester's "forwarding" of a protest within 10 days of its receipt of the initial adverse agency action does not constitute timely filing. Section 20.2(b)(3) (1978) of our Procedures specifically states that with regard to the time for filing "the term 'filed' as used in this section means receipt in the contracting agency or in the General Accounting Office as the case may be." (Emphasis added.) 4 C.F.R. § 20.2(b)(3) (1978). Furthermore, we have held that mailing of a protest does not constitute constructive receipt of the same. See American Sheet Metal Corporation, B-190932, March 20, 1978, 78-1 CPD 216. Consequently, there is no basis for reversing our prior decision concerning the first contention.

In connection with the second issue, section 20.2(c) of our Procedures does permit consideration of untimely protests where issues significant to procurement practices or procedures are raised. The significant issue exception is limited to matters which are of widespread interest to the procurement community (a principle of broad application which has not been considered before) and is exercised sparingly so that our timeliness standards do not become meaningless. See Comten,

B-185394, February 24, 1976, 76-1 CPD 130, affirmed B-185394, May 18, 1976, 76-1 CPD 259. The issue raised by R.B.S. has been considered in many prior decisions of our Office involving a wide variety of factual situations and we see nothing in the present case to warrant invoking this exception. See, e.g., G.S.E. Dynamics, Inc., B-189329, February 15, 1978, 78-1 CPD 127.

Therefore, our April 24 decision is affirmed.

*R. F. K. 11m.*  
Deputy Comptroller General  
of the United States